



DEPARTMENT OF DEFENSE

AUDIT REPORT

ARCHITECT-ENGINEER CONTRACTING AT
RAMSTEIN AIR BASE

No. 90-084

June 14, 1990

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June 14, 1990

MEMORANDUM FOR ASSISTANT SECRETARY OF THE AIR FORCE (FINANCIAL MANAGEMENT AND COMPTROLLER)

SUBJECT: Report on the Audit of Architect-Engineer Contracting at Ramstein Air Base (Report No. 90-084)

We have completed our audit of Architect-Engineer Contracting in Europe. This final report discusses our results at Ramstein Air Base, one of four sites in Europe covered by this audit. Comments on the draft report were considered in preparing the final report. The Contract Management Directorate made the audit from March through September 1989. The audit covered architect-engineer actions reported during fiscal years 1987 and 1988. The overall audit objectives were to evaluate the system for awarding architect-engineer contracts, to determine if statements of work were appropriately definitive to identify specific work to be performed, and to determine if the contractor satisfactorily performed the work specified. We also announced that we would follow up on the use of advisory audits, the acquisition of certificates of current cost or pricing data and the related statements of reliance, and utilization of postaward audits of architect-engineer contracts, as discussed in Finding B. of our Audit Report No. 87-219, "Military Specifications for Commercial Type Construction Items," August 12, 1987. In Fiscal years 1987 and 1988, 368 locations in DoD reported 21,770 architect-engineer contracts (valued at or over \$25,000 each) totaling \$4.8 billion. Of this total, Ramstein Air Base reported 15 contracts (valued at or over \$25,000 each) totaling \$622,000.

The audit showed that the process for awarding and administering architect-engineer contracts at Ramstein was conducive to potentially illegal acts. We did not evaluate the appropriateness of the statement of work and if the work was satisfactorily performed because the audit identified significant internal control problems. We concentrated our efforts on what we believed to be the more significant deficiencies. We also did not evaluate the use of advisory audits, the acquisition of and statement of reliance on cost or pricing data, and postaward audits because none of the contracts met the \$500,000 threshold governing use of these procedures. The results of the audit are summarized in the following paragraphs, and the details and audit recommendations are in Part II of this report.

The audit identified internal control weaknesses as defined by Public Law 97-255, Office of Management and Budget Circular A-123, and DoD Directive 5010.38. Architect-engineer contractors

were selected by collusive procedures between the successful firm and local national employees of the U.S. Government who also served as subcontractors to the successful firm. An Air Force investigation disclosed that these employees were using Government supplies to perform their subcontracting work and may have performed these subcontracting duties on Government time. Additionally, the contracting officer could not ensure that the Government received a fair and reasonable price. Consequently, contracts may not have been awarded to the best qualified firms, potentially illegal acts may have occurred, and the integrity of the entire architect-engineer contracting process has been compromised. We recommended that the Assistant Secretary of the Air Force (Financial Management and Comptroller) direct the Commanding General, U.S. Air Force, Europe to establish additional internal controls to: provide for separation of duties, preclude duplication of personnel in key processes, provide for rotation of assignments, increase supervisory review, and establish more complete documentation. We also recommended that the Assistant Secretary of the Air Force (Financial Management and Comptroller) direct the Commanding General, U.S. Air Force, Europe to comply with the provisions already established in the Federal Acquisition Regulation. Further, we recommended that the Assistant Secretary of the Air Force (Financial Management and Comptroller) direct the Commanding General, U.S. Air Force, Europe to take action to protect the integrity of the architect-engineer contract award and administration process. Recommendation 5. required the reporting and tracking of the material internal control weaknesses as required by DoD Directive 5010.38. Implementation of all of these recommendations will correct the material internal control weaknesses identified. The senior officials responsible for internal controls within the U.S. Air Force and the U.S. Air Force Europe will be provided a copy of the final report (page 7).

On February 16, 1990, a draft of this report was provided to the Assistant Secretary of the Air Force (Financial Management and Comptroller) and the Commanding General, U.S. Air Force, Europe, to whom the report recommendations were directed. We received an Air Force response on May 29, 1990 from the Assistant Secretary of the Air Force (Acquisition) that addressed all of our recommendations (Appendix B).

In general, the Air Force concurred with our draft report providing additional clarifying discussion as to actions already in process. The Air Force concurred in Recommendations 1.c., 1.d., 1.e., 1.g., through 1.n., 2., 3., and 5. and stated that action has already been taken or will be complete by September 1, 1990. However, the Air Force nonconcurred in Recommendations 1.a., 1.b., 1.f., and 4.

Although the Air Force agreed that individuals should not participate in both the preselection and final selection boards (Recommendation 1.a.), it pointed out that the developer of the statement of work would have the most expertise of the specific project and would be the best qualified to prepare the Government estimate; that there is a limited staff at Ramstein qualified to perform these duties; and that additional supervisory involvement, combined with additional contract officer review would accomplish the same overall objective. We agree with the Air Force comments and have reworded Recommendation 1.a. accordingly.

The Air Force nonconcurred with Recommendation 1.b. to preclude board members from serving on consecutive boards. The Air Force suggested an alternative that the composition of the boards' membership should change between consecutive boards. We agree that this meets the intent of the recommendation and have reworded the recommendation accordingly.

The Air Force nonconcurred in draft Recommendation 1.f. that the contracting officer's representatives (COR's) be officially appointed for specific projects. The Air Force stated that COR appointments are not necessary since their duties are assigned in Air Force Regulation 88-31. We agree that duties are identified in the Air Force Regulation; however, the Air Force regulation does not require that a specific person be designated as the COR and does not provide that only specific duties will be assigned for the specific contract. Since this is a topic of another Inspector General, DoD audit in process (Audit of the Justification for Use of Time and Material Contracts, Project No. 8CE-0037), which is providing more detailed coverage, we withdrew the recommendation in favor of the more inclusive audit work and have relettered the recommendations accordingly.

Finally, the Air Force nonconcurred in Recommendation 4. to take appropriate and necessary personnel action, to include firing the employees involved, to protect the Government's interests. Management agreed, however, to take action if required in the future. They maintained that nothing could be done for conditions already identified and discussed in our report. The Deputy Inspector General, DoD discussed these types of problems with representatives of the Government of the Federal Republic of Germany on May 3, 1990. The representatives agreed to review the circumstances involved and consider alternatives to address both the specific situation at Ramstein Air Base and to help preclude similar problems in the future. In the meantime, the employees involved have been reassigned to different positions where they will not be involved in future A-E contracts where the same conditions could occur. Therefore, we have removed the specific requirement from the recommendation and believe that the actions taken comply with the reworded recommendation.

DoD Directive 7650.3 requires that all audit recommendations be resolved within 6 months of the date of the final report. Accordingly, we request that the Assistant Secretary of the Air Force (Financial Management and Comptroller) provide final comments on the unresolved issues in this report within 60 days of the date of this report, including proposed corrective actions and completion dates. This report does not claim any monetary benefits.

The courtesies extended to the audit staff (listed in Appendix D) are appreciated. If you wish to further discuss this report, please contact Mr. Paul Granetto, Program Director, on (202) 693-0573 (AUTOVON 223-0573) or Mr. Wayne Million, Project Manager, on (202) 693-0593 (AUTOVON 223-0593). Copies of the final report will be distributed as shown in Appendix E.



Edward R. Jones
Deputy Assistant Inspector General
for Auditing

cc: Secretary of the Air Force

FINAL REPORT ON THE AUDIT OF
ARCHITECT-ENGINEER CONTRACTING AT
RAMSTEIN AIR BASE

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Prepared by:
Contract Management Directorate
Project No. 9CD-0032.01

FINAL REPORT ON THE AUDIT OF
ARCHITECT-ENGINEER CONTRACTING AT
RAMSTEIN AIR BASE

PART I - INTRODUCTION

Background

The Brooks Architect-Engineers Act, Public Law 92-582, "Selection of Architects and Engineers," sets forth the basic statutory framework for federal agencies to use in contracting for architectural and engineering services. The Act requires the head of an agency to determine an order of preference for selecting the best qualified firms and then to negotiate a fair and reasonable price with the top ranked firm.

The Act defines architectural and engineering services as including "those professional services of an architectural or engineering nature as well as incidental services that members of these professions and those in their employ may logically or justifiably perform." Federal Acquisition Regulation (FAR), section 36.102 (as amended by Federal Acquisition Circular 84-23), further defines architect-engineer (A-E) services as:

- (a) Professional services of an architectural or engineering nature associated with research, development, design, construction, alteration, or repair of real property that are required by virtue of law to be performed by a registered or licensed architect or engineer; or
- (b) Such other professional services as determined by the contracting officer, which uniquely or to a substantial or dominant extent logically require performance by a registered or licensed architect or engineer; and
- (c) Incidental services that members of the architect or engineer professions or those in their employ may logically or justifiably perform in conjunction with professional architect-engineer services acquired by Pub. L 92-582 procedures.

The FAR establishes the primary codification and publication of uniform policies and procedures for all acquisitions by executive agencies. The Defense Federal Acquisition Regulation Supplement (DFARS) contains the guidance and direction that DoD contracting personnel should use when they award and administer DoD contracts.

The DFARS implements the FAR and provides supplementary policies and procedures that are unique to the Department of Defense. The Military Departments, the Army Corps of Engineers, and the Naval

Facilities Engineering Command further supplement the FAR and DFARS with their own acquisition regulations. Noncompliance with these policies and procedures constitutes a circumvention of established internal controls.

The process for selecting an architect-engineer (A-E) firm for a Government contract differs materially from that of other Government contracts, in which price or cost is a determining factor. To qualify for selection, an A-E firm must submit its qualifications using Standard Form 254 (SF 254), "Architect-Engineer and Related Services Questionnaire," and Standard Form 255 (SF 255), "Architect-Engineer and Related Services Questionnaire for Specific Projects." These qualifications are then evaluated against the established selection criteria and compared with the qualifications of other A-E firms. This process is designed to result in the selection of the firms best qualified to perform the required services. The following is an outline of the steps as they should occur in the A-E selection process for contracts expected to exceed \$10,000.

- Proposed projects, including the selection criteria to be used in the evaluation, are publicly announced.
- Interested A-E firms submit an SF 254 (unless one has been submitted within the last year) and an SF 255.
- Using the selection criteria stated in the public announcement, an evaluation board reviews the forms from all A-E firms that responded and recommends at least three firms for further consideration.
- Recommended firms are given additional information and invited to make presentations and attend interviews.
- Based on the interviews and other information, a second evaluation board ranks at least the top three firms on the basis of their capabilities.
- An A-E Selection Official reviews the evaluation board's recommendations and, upon approval, invites the top ranked firm to submit a proposal to be used as a basis for negotiations.
- A contract is awarded after successful negotiations. If negotiations with the top ranked firm are not successful, the next firm in preference order is invited to submit a proposal, until the contract is awarded. If negotiations are unsuccessful with all firms in succession, the entire process is repeated.

These procedures preclude the Government from engaging in competitive negotiations for the procurement of A-E services and relieve architects and engineers from the burden of competing on a price or cost basis. The Competition in Contracting Act of

1984 (CICA) requires contracting officers to use competitive procedures to the maximum extent possible when awarding Government contracts. CICA states that the selection of sources for architect-engineer contracts in accordance with the provisions of Public Law 92-582 is automatically considered a competitive procedure.

Objectives and Scope

Our announced audit objectives were to evaluate the system for awarding architect-engineer contracts, to determine if statements of work were appropriately definitive to identify specific work to be performed, and to determine if the contractor satisfactorily performed the work specified. We also announced that we would follow up on the use of advisory audits, the acquisition of certificates of current cost or pricing data and the related statements of reliance, and utilization of postaward audits of architect-engineer contracts, as discussed in Finding B. of our Audit Report No. 87-219, "Military Specifications for Commercial Type Construction Items," August 12, 1987.

Our initial objectives included a requirement to evaluate the statement of work and determine if the work was satisfactorily performed. During the initial phase of our audit we made a limited review of the sufficiency and specificity of the statements of work. When the audit disclosed that significant internal control deficiencies existed, we decided to concentrate our audit efforts on the more obvious, and in our opinion, more significant problems involving internal controls. Details of the problems associated with internal control deficiencies are discussed in Part II of the report.

DoD contracting actions over \$25,000 are reported on an Individual Contract Action Report, DD Form 350, and they are accumulated in a data base by the Washington Headquarters Services, Directorate for Information Operations and Reports. A Federal Supply Class (FSC) code identifies the type of service. For the purposes of our audit, we considered all FSC codes beginning with R1 (Architect & Engineer Construction) or R2 (Architects & Engineers Services - General). For fiscal years 1987 and 1988, this data base contained 21,770 A-E contracts amounting to \$4.8 billion reported by 368 locations. We selected audit sites by grouping locations into 187 geographic clusters and selecting a random stratified sample by cluster. Our sample consisted of three cluster sites from the large stratum (combined

^{1/} "Contracts" in this report (unless otherwise identified) will have the same meaning as prescribed in FAR 2.101: "[Any] mutually binding legal relationship obligating the seller to furnish supplies or services (including construction) and the buyer to pay for them."

dollar value \$100 million and over), six cluster sites from the medium stratum (combined dollar value \$10 million to \$99 million), and six cluster sites from the small stratum (combined dollar value \$1 million to \$9 million). For each site, a random sample of contracts was selected from the combined fiscal years being reviewed. The European cluster (including the European portion of Atlantic Division, Naval Facilities Engineering Command) consists of the following four sites.

- Ramstein Air Base, Federal Republic of Germany;
- U.S. Army Engineer Division Europe, Frankfurt, Federal Republic of Germany;
- Detachment 1, Space Combat Operations Staff, Copenhagen, Denmark; and
- Officer In Charge of Construction - Mediterranean, Madrid, Spain.

We are currently planning to issue a separate report for each of these sites.

At the Ramstein Air Base, we did not follow up on our prior audit report because none of the contracts met the established threshold of \$500,000. During fiscal years 1987 and 1988, Ramstein Air Base issued 4 indefinite delivery type (IDT) basic awards, which included 15 contracts (valued at or over \$25,000) totaling \$622,000. Our audit included all four of the IDT basic awards for A-E services. However, of the 15 contracts, we only reviewed 13 with a total value of \$549,000. In addition, we reviewed six related contracts (each valued under \$25,000). The 19 contracts reviewed (excluding the 4 basic IDT awards, which did not contain any specific funding amount), totaled \$619,000. See Appendix A for the list of IDT basic awards and contracts reviewed.

We could not quantify the potential monetary benefits to be derived by implementing our recommendations. See Appendix C for the summary of potential monetary and other benefits resulting from this audit.

This economy and efficiency audit was made at Ramstein Air Base, between March and September 1989 and was conducted in accordance with auditing standards issued by the Comptroller General of the United States as implemented by the Inspector General, DoD, and accordingly included such tests of the internal controls as were considered necessary. We evaluated the policy and guidance stated in the FAR, DoD, Service, and local regulations to determine if the intent of the Brooks Act was properly implemented.

Internal Controls

The audit included a review of: A-E contract files; investigative files; Architect-Engineer Contract Administration Support System (ACASS) data; FAR, DFARS, Air Force Federal Acquisition Supplement (AFFARS), and Air Force Regulation 88-31 requirements. We also interviewed contract, engineer, contractor, and investigative personnel to further evaluate internal controls.

Additional internal controls needed to be implemented, and existing internal controls were not being followed. We found internal control weaknesses involving separation of duties; supervision; execution of transactions and events; documentation; and noncompliance with regulatory requirements for the award, administration, and completion of A-E contracts. The internal control weaknesses are discussed in detail in Part II of this report.

Prior Audit Coverage

On August 12, 1987, the Inspector General, DoD, issued Report No. 87-219, "Military Specifications for Commercial Type Construction Items." Finding B. of that report identified problems in the use of advisory audits, the acquisition of certified cost or pricing data, and the inclusion of statements of reliance on certified cost or pricing data in negotiations. The Inspector General, DoD, recommended that the FAR be fully implemented and that a greater number of A-E contracts be incorporated into annual postaward auditing plans.

Management concurred with the recommendation to comply with the FAR. That action was considered responsive. The Defense Contract Audit Agency (DCAA) performed additional defective pricing reviews to determine the risk involved. As a result of these reviews, DCAA stated that the risk on A-E contracts was no greater than the risk on other DoD contracts and elected not to include any additional audits beyond their normal scheduled reviews.

Other Matters of Interest

International agreements and host country laws and policies may supersede or supplement U.S. regulations, laws, and policies. These agreements require the use of local nationals working as U.S. Government employees. These local nationals have different employee benefits, work schedules, holidays, pay structures, etc.

The U.S. Army Engineer Division Europe (EUD) is responsible for all A-E contracting for major construction in Europe. This responsibility includes A-E contracting for the U.S. Air Force at Ramstein. When certain criteria are met, EUD forwards the

requirements to the applicable host nation Government department, ministry, or agency to issue and administer the contracts. The Air Force at Ramstein has authority to perform A-E contracting for minor repair and renovation projects in the Federal Republic of Germany, west of the Rhine river. As a result, A-E contracting for the Ramstein area may be accomplished by the Air Force, the Corps of Engineers, or an activity designated by agreement with the Federal Republic of Germany (through the Corps of Engineers).

We contacted the U.S. Air Force, Europe, Command Cost Analysis Division, concerning internal control reviews performed at the contracting activity. We were informed that no internal control reviews were performed at Detachment 2, 7000th Contracting Squadron, in fiscal years 1988 and 1989.

As a result of discussions we held with management during the audit, by the end of November 1989, the contracting office at Ramstein had initiated action to require the contracting officer to be more directly involved in the A-E contracting process. Efforts were also initiated to implement additional separation of duties, improve documentation, and comply with established requirements. Additionally, all personnel in the engineering design unit have been given written guidance on Air Force Regulation (AFR) 30-30, "Standards of Conduct," and have been encouraged to conduct their affairs in accordance with the intent of the regulation. The AFR 30-30 is not binding to local national employees; however, the Civilian Personnel Office is investigating the possibility of establishing a local regulation or policy that will bind local national employees to the requirements of this regulation.

PART II - FINDING AND RECOMMENDATIONS

Inadequate and Circumvented Internal Controls

FINDING

Contracting Officers at Ramstein Air Base awarded architect-engineer contracts to firms that were selected by collusive procedures between the successful firm and U.S. Government local national employees, who also served as subcontractors to the successful firm. This occurred because existing internal controls were inadequate, ignored, or circumvented and because contracting officers unnecessarily relied on data supplied by unsupervised, senior, local national personnel who placed their own interests above those of their U.S. Government employer. As a result, improper and potentially illegal acts may have occurred, contract awards were made for which contracting officers could not ensure fair and reasonable pricing, and the integrity of the entire procedure for awarding architect-engineer contracts at Ramstein Air Base was severely compromised.

DISCUSSION OF DETAILS

Background. At Ramstein, various groups of employees accomplished the architect-engineer (A-E) contract and administration process. The contracting function was accomplished by Detachment 2, 7000th Contracting Squadron, Ramstein Air Base. The U.S. Air Force's 377th Civil Engineering Group provided engineering technical support for Ramstein Air Base area contracts. The U.S. Army's 29th Area Support Group provided engineering technical support for Kaiserslautern area contracts. The Defense Contract Audit Agency (DCAA) was not requested to perform either preaward or postaward audits of these contracts.

The contracting office at Ramstein issues contracts for renovation, repair, and minor construction of U.S. facilities in the Federal Republic of Germany west of the Rhine river. During fiscal years 1987 and 1988, orders were placed against four indefinite delivery type (IDT) A-E awards: two IDT's for Ramstein Air Base and its surrounding area and two IDT's for Kaiserslautern and its surrounding area.

Details of Audit. Our audit included all 4 IDT awards for A-E services, 13 related contracts over \$25,000, and 6 related contracts under \$25,000. All of the contracts were awarded during fiscal years 1987 and 1988. The total value of the contracts we reviewed amounted to \$619,000. (See Appendix A for the list of contracts examined.) Our analysis of the award and administration of A-E contracts disclosed that the U.S. Government resources were not protected from illegal activity. One of the factors contributing to the condition discussed in

this report was the performance of various functions leading to the award and the administration of A-E contracts by technical personnel who were not assigned to contracting. Additionally, the cognizant contract administration office did not ensure that the documentation received from the technical personnel was complete, adequate, or otherwise acceptable. The following chart identifies, by functional area, who has been responsible for A-E contracting at Ramstein.

| Functions Performed | Functional Area | |
|--|-----------------|-------------|
| | Contracting | Engineering |
| Determine the need for A-E service | | X |
| Authorize contracting for an A-E | | X |
| Prepare public announcement | | X |
| Publicize requests for A-E services | X | |
| Prepare statement of work | | X |
| Maintain file of SF 254's | | X |
| Prepare Government estimate | | X |
| Identify members to be on preselection and final selection boards | | X |
| Appoint boards | | X |
| Perform preselection (Board) | | X |
| Perform final selection (Board) | | X |
| Prepare request for proposal | | X |
| Send proposal request to contractor | X | |
| Obtain cost estimate (proposal) from A-E firm | X | |
| Perform negotiations | X | X |
| Determine that fees are fair and reasonable | X | |
| Prepare and sign contract | X | |
| Act as contracting officer's representative | | X |
| Review and accept submittals | | X |
| Approve invoices for payment | X | X |
| Prepare performance evaluations | | X |

Engineering personnel performed the majority of the functions, while the contracting officer merely provided technical contracting advice and signed the contracts. This occurred primarily because Air Force Regulation 88-31 (AFR 88-31) assigns many of these functions to the civil engineering official. However, the FAR and appropriate DoD regulations establish overall responsibility for contracts in the contracting officer. In order to make proper decisions to award and administer contracts, the contracting officer must have some type of active involvement in the various functions. As an alternative, the contracting officer may ensure that the documentation representative of these functions is sufficient to make proper decisions. As indicated by the Air Force Office of Special Investigation (OSI) files, improper and potentially illegal activity may have occurred because existing internal

controls were inadequate, ignored, or circumvented and because contracting officers relied on inadequate, incomplete, or nonexistent documentation provided by unsupervised, senior, local national engineering personnel who placed their own interests above those of their U.S. Government employer. These matters are discussed in detail in the following paragraphs.

Inadequate Internal Controls. Internal controls are those integral parts of an overall management system that ensure compliant operation of the programs and functions performed by an organization. Internal controls should provide reasonable assurance that the resources allocated to, and functions performed by, an activity are adequately safeguarded and protected against fraud, waste, or mismanagement. To obtain this assurance, an activity must comply with certain internal control standards. DoD Directive 5010.38, "Internal Management Control Program," identifies six specific standards that should be included in internal control programs. These standards include, but are not limited to, separation of duties, supervision, execution of transactions and events, and documentation.

Separation of Duties. A primary element in internal controls is the separation of duties. This element generally requires that key duties and responsibilities in authorizing, processing, recording, and reviewing transactions not be vested in one individual. In our opinion, major duties and responsibilities should be systematically assigned to different individuals, and whenever possible, to different functional areas. Sufficient separation of duties provides an effective system of checks and balances to reduce the risk of error, waste, and wrongful acts. It also reduces the risk of error, waste or wrongful acts from going undetected should they occur.

At Ramstein, we found severe violations of this particular internal control. Local national engineers, employed by the U.S. Air Force, were performing many of the major functions in the A-E contract award and administration process. Following are two examples of engineers who performed many of the major functions on a particular contract, which highlights our concern regarding the absence of effective separation of duties.

- On contract F61521-86-D2009, one engineer chaired the final selection board, prepared the Government estimate, acted as the contracting officer's representative (COR) for the basic contract and all of the orders in the sample, and approved the receiving reports accepting the various contractor submittals.

- On the same contract, another engineer chaired the preselection board, initiated the Purchase Request and Commitment document, approved the Government estimate, participated as a member of the negotiation committee, and approved the receiving reports accepting the various contractor submittals.

Allowing one or two individuals (outside of contracting) a major role in so many functions promotes a potential for unethical and illegal acts and impedes proper control over the contracts. Similarly, individuals should not serve in certain combinations of positions, and those who prepare certain sets of key documents such as the statement of work (SOW) and the independent Government estimate (IGE) should be identified to preclude such duplication among key positions. Members of the preselection board should not also serve as members of the final selection board. An individual serving as a member on both selection boards would have the ability to influence the selection of a specific contractor.

The SOW is the basis upon which all remaining A-E contracting functions are accomplished. It establishes the Government's requirements, the A-E services needed, the performance schedules to be met, and the criteria upon which the A-E firm will be selected and evaluated. The SOW is a foundation for preparing the IGE and the contractor's proposal, both of which are the basis for negotiations. The IGE, on the other hand, represents the Government's cost position. Because the A-E award process does not allow for price competition, the IGE serves as a major indicator in determining if the contractor's proposal is fair and reasonable. If the preparer of the IGE has difficulty estimating a cost for the statement of work, or if the IGE is different from the contractor proposal, then a defective SOW may be indicated. The IGE thereby serves as a quality control on the SOW. It ensures that there is no cost estimate for "understood" requirements and serves as an independent review of the SOW.

Of all the actions we reviewed at Ramstein, only four were documented to show the preparer of the SOW's and IGE's. In all four contracts, the same engineer prepared both documents; clearly not an effective, or even an attempted separation of duties. For all IDT awards and the remaining 15 contracts, we could draw no conclusion because the files did not indicate who prepared these two documents.

Effective internal controls also include a rotation of duties. For example, rotation of board members ensures that the authority and responsibility of selecting the contractor is not continually vested in the same individuals. Two IDT A-E awards for the Kaiserslautern area were made during fiscal years 1986 and 1987. The preselection boards for both awards consisted of the same five members, and the final selection boards for both awards also consisted of the same four members. There were also two IDT A-E awards for the Ramstein area made during fiscal years 1986 and 1987. For these two awards, two of five engineers were members on both preselection boards, and one engineer served on both final selection boards. In both the Kaiserslautern and the Ramstein areas contracts, the incumbent contractors were again selected as the top-ranked contractors in the following year.

Supervision. Internal controls generally require that adequate supervision, which includes qualified and continuous oversight, be provided to ensure that internal control objectives are achieved. Furthermore, operating level staff must be provided necessary guidance, training, and review. Duties, responsibilities, and accountabilities must be clearly delineated and communicated for each functional process. Work must be reviewed and approved to the extent necessary to ensure that critical objectives are accomplished and that errors, waste, and wrongful acts are minimized.

At Ramstein, the base civil engineering personnel, relied upon by the contracting officer as a technical advisor, consisted entirely of local nationals, supervised by a U.S. military chief. The U.S. military supervisor is replaced regularly as part of the military rotational assignments, while the local national employees have been permanently assigned. Because management consists of rotational U.S. military personnel, the local national employees are actually considered to be the experts in the area and their actions, advice, and decisions are generally not questioned.

Supervisory review and approval is essential, since documents like the SOW, the selection board reports, and the IGE are such vital tools in identifying the Government's requirements, selecting the best contractor, and obtaining a fair and reasonable price for A-E contracts. The role of the supervisor is a control that helps eliminate errors, misunderstandings, and improper practices; and increases the chance that an illegal act will be detected.

SOW's were prepared for the 4 IDT awards and for 17 contracts in our sample. None of the SOW's indicated that there was any supervisory review. Supervisory review was not indicated on any of the eight selection board reports that we reviewed. For the items in our sample, there were IGE's prepared for the 4 IDT awards as well as 18 IGE's and 14 revised IGE's prepared for the related contracts. Of the 36 original or revised IGE's only 1 indicated any supervisory approval.

Another area requiring supervisory control is review and acceptance of contractor submittals. A-E contracts generally require acceptance and approval of submittals upon completion of specific phases prior to proceeding to the next phase. The receipt of the submittals is the process by which the Government certifies that the items received conform to what was requested, are in good condition, and contain the correct quantity. For 3 of the 13 contracts in our sample with receiving or acceptance reports, a single individual was the sole reviewer. Good internal control procedures dictate that an additional person would also "sign off," usually at the supervisory level.

Execution of Transactions and Events. DoD Directive 5010.38, "Internal Management Control Program," Enclosure 3, requires that "Transactions and other significant events shall be authorized and executed only by persons acting within the scope of their authority." This standard is the primary control to ensure that only valid authorized transactions or events are accomplished. It also requires that authorization be clearly communicated to each employee and should include the specific conditions and terms of the authorization. Conformance with the authorization means that the employee is complying with the directives established by management.

At Ramstein, there was no documentation covering the appointment, definition of scope of duties, or limitation of authority of the contracting officer's representative (COR). Contracting officers have the authority to appoint a person to act on their behalf to assist in the administration of contracts, subject to limitations. For A-E contracts, a COR would be the technical expert primarily responsible for monitoring the A-E contractor's performance, evaluating the A-E work as it progresses, and recommending acceptance of the work when it is delivered. We believe that in order to provide appropriate control, appointments of COR's should be in writing and should clearly define the scope and limitations of the authority of the COR. When a COR is appointed for more than one contract, the appointments should be made separately, clearly defining the scope and limitations applicable to each contract. In all cases, the appointment documents should be maintained in the contract files. At Ramstein, base civil engineer personnel were performing many of the A-E contract award and administration functions. Documentation did not exist to support their authority or to indicate the scope or limitations of their responsibility.

Documentation. This internal control standard generally requires that all transactions and all significant events be clearly documented, and that documentation be available for examination. Documentation must be complete and accurate to facilitate tracking the transaction or event from inception to completion. In our opinion, the standard requires that documentation be purposeful and useful to managers to facilitate control of the operations. Additionally, the documentation must be organized in a manner that allows auditors, and others reviewing the file, to clearly reconstruct the complete series of events.

A key element of documentation is the ability to identify the source of the documentation. If unclear or inaccurate documentation results in problems, it is essential to know who to contact for clarification. The SOW, for example, is the basic building block for the entire contracting process. Similarly, the IGE is another key document in the A-E contract award

process. The IGE is the document that establishes the Government's cost position. When clarification or correction of either document is needed, the preparer must be identifiable. Review of the contract files disclosed that none of the IDT awards contained a SOW in which the preparer was identified. Upon review of the other contractual files, we found that only 5 of the 17 files contained SOW's that identified the source. While the preparer of the IGE for each of the IDT awards was identified, only 10 of 18 IGE's identified the preparer of the original IGE for the related contracts, and only 2 of 14 revised IGE's identified the preparer.

Another important internal control over documentation is the ability to establish the time when the documentation was created. Knowing when documentation was created is significant when determining if actions were accomplished in the required sequence as well as determining the latest revision to the document. At Ramstein, we essentially found no problem in this area. In three of the four IDT awards, the SOW's contained a date prepared. Moreover, all 17 of the contracts that required a SOW in our sample included a date prepared.

AFR 88-31 assigns various A-E contract award and administration functions to the civil engineering office. Even though these functions were assigned to the engineers, the contracting office is ultimately responsible for the contract. The contracting officer must receive and review the documentation provided to ensure that it is complete and adequate. Additionally, the engineering office must maintain a file to support the documentation provided to the contracting office. At Ramstein, the civil engineering office did not maintain official supporting files and the contract files contained examples where the required documentation was missing or incomplete. These examples are discussed below.

Internal Controls Were Being Circumvented. The FAR, DFARS, Service regulations and directives, and installation instructions provide policies and procedures that establish controls to protect resources against abuse, waste, or mismanagement. Circumvention of these controls creates risks and provides an opportunity for illegal acts to occur. We reviewed contract files and related data to determine if these policies and procedures were being followed and properly implemented. At Ramstein, the A-E contract award and administration process was not effectively implemented.

FAR 1.602 requires that:

Contracting officers are responsible for ensuring performance of all necessary actions for effective contracting, ensuring compliance with the terms of the contract, and safeguarding the interests of the United States in its contractual relationships.

Based on the above requirement, contracting officers must ensure that all necessary actions are accomplished. If these actions are performed in other functional areas, the contracting officer must receive adequate documentation to support the accomplishment of the action. The documentation must be complete and organized in a manner so that the contracting officer can reconstruct the action being documented. Thus, the contracting officer ensures that established requirements are accomplished and that internal controls are not circumvented. The following sections discuss controls that were circumvented.

Public Announcement of Requirements. FAR 36.601(a) requires that "The Government shall publicly announce all requirements for architect-engineer services." FAR 5.205(c) further requires that "Contracting officers shall publish [in the Commerce Business Daily (CBD)] notices of intent to contract for architect-engineer services . . . [when] the total fee . . . is expected to exceed \$25,000." FAR 5.202 provides an exception from publishing in the CBD when the contract will be performed outside the United States and only local sources will be solicited; an exception is not provided for public announcements in the local area from which the sources will be solicited. Such announcements are the only means by which all firms can be made aware of a Government requirement, and they provide a control ensuring that all available sources are allowed to compete for the award. At Ramstein, only one of the four IDT awards, all of which were required to be publicized, included any type of public announcement. This was accomplished by placing an announcement in a local trade journal. The other three files contained no documentation that an announcement was ever prepared or published. Therefore, there is no assurance that all interested firms were aware of the Government's requirement, or that effective competition was obtained.

Announced Evaluation Criteria. FAR 5.207(c) requires contracting officers to:

Prepare the synopsis to ensure that it includes a clear description of the . . . services to be contracted for, . . . Include the following elements to the extent applicable. . . . brief details with respect to: location, scope of services required, cost range and limitations, type of contract, estimated starting and completion dates, and any significant evaluation factors.

Air Force Regulation (AFR) 88-31 A1-3 a(6)(a) further requires that when preparing a CBD synopsis, the "notice publicizing procurement of A-E services . . . must be listed with a brief statement concerning the location, scope of service needed, the significant evaluation factors and the relative order of importance the government attaches thereto." Although the FAR,

DFARS, and the AFR do not specifically address requirements for non-CBD public announcements, a reasonable person's approach would dictate the use of these cited guidelines in order to comply with the intent of the Brooks Architect-Engineers Act. This Act requires that selection of an A-E firm be "based upon criteria established and published". Establishment of the evaluation criteria is a matter of determining which factors are important in the selection of an A-E firm and establishing relative weights. Providing these data in a formal announcement informs prospective A-E firms what factors are going to make a difference in the selection process as well as the relative importance of each factor. Those firms lacking the significant requirements, or specializing in different areas, may not wish to submit their qualifications. Conversely, those firms that concentrate in the required areas may exercise greater care in preparing their application. At Ramstein, only one of the four IDT awards was announced in a local trade journal. The prepared announcement did not include a list of evaluation factors or any assigned priority to the evaluation criteria.

Independent Government Estimates. FAR 36.605 requires the preparation of an independent Government estimate and its submission to the contracting officer before negotiations. Preparation of the IGE before the receipt of the contractor's proposal ensures that the original estimate was not influenced by the proposal. Therefore, the date of the IGE is an important part of the internal control function and is the only evidence to support compliance with the FAR requirement of preparation before negotiations. The IDT awards at Ramstein contained dates for three of the four IGE's; however, one of these three was dated after negotiations. For the related contracts, 10 of 18 original IGE's and only 4 of the 14 revised IGE's were dated. All dates were before negotiations. We could not determine when the undated IGE's were prepared or if they were available to the contracting office before negotiations, as required.

Maintenance of Engineer and Related Services Questionnaires. Standard Form 254 (SF 254), "Architect-Engineer and Related Services Questionnaire," is required by the Federal Government from any firm interested in providing architect-engineer or related services. In addition, FAR 36.702(b)(2) requires the submission of a Standard Form 255 (SF 255), "Architect-Engineer and Related Services Questionnaire for Specific Projects," when the award is expected to exceed the small purchase limitation. The SF 255 is used to identify specific qualifications and to identify outside key consultants/associates for the specific project under consideration. These forms are used as a basis for screening firms before requesting additional data or selecting firms for discussions. Because the data contained on these forms are used for making decisions that result in the final contractor

selection, the forms for the firms recommended by the final selection board become an integral part of the contract history and must be maintained in the official contract file. At Ramstein, only two of the official contract files contained the SF 254's and none of the files contained the SF 255's for the successful contractor.

SF 254's and SF 255's submitted by all interested firms are supposed to be maintained in a centralized file of available A-E sources. When the selection boards perform their evaluation, a review of the central file can provide a cross-check to ensure that all firms were considered in the evaluation. Additionally, maintenance of a central file eliminates duplication of files by engineering support personnel located at different areas such as the 377th Civil Engineering Group and the Army's 29th Area Support Group. FAR 36.603(d) requires that the files of SF 254's and SF 255's be maintained and that they be reviewed and updated annually. At Ramstein, a central file of the SF 254's and SF 255's was not maintained at the contracting office. Since AFR 88-31 requires the civil engineer office to "Maintain current files of SFs 254," we visited the 377th Civil Engineering Group at the Einsiedlerhof Air Station, which had performed the selection functions. This group did not maintain a central file and was unable to locate or provide the SF 254's or the SF 255's for the contractors in our sample. AFR 88-31, Attachment 1, paragraph A1-9 states that "The SF 254 is the only form which an Air Force office is required to keep on file." The Air Force personnel at Ramstein could not explain the apparent inconsistency between the AFR 88-31 and the FAR. We believe that this requirement of the AFR 88-31 is not in compliance with the FAR.

Selection Boards. FAR 36.602-2 requires that evaluation boards (commonly called selection boards by the Air Force) shall be "composed of members who, collectively, have experience in architecture, engineering, construction, and Government and related acquisition matters." FAR 1.602 requires that contracting officers request and consider the advice of various types of specialists. The contracting officer must ensure that all relevant acquisition matters are properly covered, or that actions taken during the evaluation process do not compromise subsequent procurement actions. At Ramstein, no one from the contracting office was included on the selection boards and none of the engineers on the selection boards were trained in acquisition matters. Although this procedure was contrary to FAR 36.602-2, it was in accordance with AFR 88-31, which requires that preselection and final selection boards be composed of technical members of the responsible Air Force civil engineering official's staff.

FAR 36.602-2 also requires that members of the selection boards be appointed from highly qualified professional employees of the

agency, other agencies, or private practitioners of architect, engineer, or related professions. Members appointed from another agency, another engineering activity within the same agency, or an outside source also provide an internal control. A professional noninterested party can be totally objective, eliminating any bias (or appearance of bias) in the selection process. At Ramstein, all contract files contained appointment letters; however, in no case were members appointed from outside of the activity directly involved. Since numerous other military engineering activities containing a multitude of engineers were assigned to the Ramstein Air Base or the proximate vicinity, at least one board member could have been appointed from one of these activities to provide a disinterested party in the selection process. By complying with the AFR and ignoring the FAR provisions, there is no reasonable assurance that the selection procedures were properly accomplished and the Government's interest protected.

Evaluation of Past Performance. FAR 36.602-1 requires that "Agencies shall evaluate each potential contractor in terms of its . . . Past performance on contracts with Government agencies." AFR 88-31, Al-5b(2) further states that ". . . each firm under consideration will be evaluated on the basis of the information contained in the SFs 254, 255, and 1421 [Performance Evaluation (Architect-Engineer)] and other data requested." A review of past performance is essential because it provides insight into the firm's ability to accomplish requirements. In addition to SF 1421's on file, past performance data are available from other sources. The DFARS 236.604 directs that all performance data be sent to the U.S. Army Engineer Division, North Pacific, Portland, Oregon. In accordance with DFARS 236.201, these data are then made available to all DoD components via a central data base for any subsequent A-E selection evaluations. At Ramstein, none of the selection board reports, or documentation in the contract files, contained any indication that the selection boards attempted to review the past performance of any of the contractors being considered or selected, either from prior SF 1421's or from the central data base. In addition, the local engineering office did not maintain any official files that documented any evaluation of past performance.

Selection Interviews. To make an accurate final evaluation of the firms being considered, additional clarifying information is generally required. FAR 36.602-3 states that:

. . . an evaluation board shall . . . Hold discussions with at least three of the most highly qualified firms regarding concepts and the relative utility of alternative methods of furnishing the required services, when the prospective architect-engineer contract is estimated to exceed \$10,000.

These discussions provide the selection boards additional assurance that the firm's application is completely understood and provide the A-E firm the assurance that it completely understands the requirements. At Ramstein, there was no documentation in three of the four IDT award files to indicate that any firms were ever contacted for discussions as required by the FAR.

Selection Reports. Upon completion of the selection process, each selection board must summarize its proceedings. FAR 36.602-3(d) requires that selection boards:

Prepare a selection report . . . recommending, in order of preference, at least three firms that are considered to be the most highly qualified to perform the required services. The report shall include a description of discussions and evaluation conducted by the board to allow the selection authority to review the considerations upon which the recommendations are based.

In addition, AFR 88-31 requires that a summation of the selection board's actions be prepared.

The summary includes a listing of the A-Es considered for selection by the board, the basis for the evaluation method used, the results of discussions, interviews if conducted, and a prioritized list, or final slate, in order of preference, of a minimum of three A-E firms considered to be the best qualified, for approval. Brief statements of the factors influencing the selection may be included. The summary is annotated FOR OFFICIAL USE ONLY, and becomes part of the official files.

For the single IDT award that indicated that the prospective contractors were interviewed, there was no summary of the discussions held. For two of the eight board reports, the bases used for the evaluation were not included in the contract files. In addition, none of the board reports contained any type of narrative summation of why one firm was ranked higher than another.

Negotiations. The contracting officer is ultimately responsible for the proper execution of the contract and is trained to conduct negotiations in accordance with applicable laws and regulations. The contracting officer is responsible for the agreed upon "bottom line" and ensures that a fair and reasonable price is obtained. Advisory services may be requested, which include internal and external audit assistance, architect-engineer technical assistance, legal assistance, or any other assistance the contracting officer may require to complete

negotiations. Generally, engineering and other technical experts should only participate in negotiations in an advisory role and at the request of the contracting officer. For example, the preparer of the independent Government estimate would have an intimate knowledge of the pricing elements. As a technical advisor during negotiations, an engineer would provide valuable expertise. For 5 of the 18 contracts in our sample, there were no indications that negotiations were even held.

Certified Cost or Pricing Data. FAR 15.804-2 requires that certified cost or pricing data be obtained for any contract action expected to exceed \$100,000. (Exceptions include adequate price competition, established catalog or market prices, or prices established by law or regulation.) Certified cost or pricing data, submitted by an offeror, enable the Government to perform cost or price analyses and ultimately provide a basis for the Government and the contractor to negotiate fair and reasonable prices. When cost and pricing data are used to support negotiations, additional contract clauses should be included as part of the contract to ensure the Government's right to adjustments if the cost or pricing data are found to be inaccurate, incomplete, or noncurrent as of the date of final agreement. If the contracting officer learns of or suspects invalid cost or pricing data after the award, and the appropriate clauses are included, the contracting officer can then request an audit of such data. If the audit reveals defective data and the appropriate clauses are included in the contract (FAR 52.215-22, "Price Reduction for Defective Cost or Pricing Data," and FAR 52.215-23, "Price Reduction for Defective Cost or Pricing Data - Modifications"), recovery of appropriate costs can be accomplished.

At Ramstein, four IDT awards were processed during the period of our review. Each of these IDT awards was expected to exceed \$100,000; two IDT awards contained an annual limitation of \$400,000 and two contained an annual limitation of \$250,000. At least \$247,000 of A-E services was ordered under each IDT award; however, none of the IDT awards included the requirement for cost or pricing data or the defective pricing clauses. Before negotiation of contract F61521-86-D2012, the Command funded and identified projects with an estimated total value of \$230,000. Further, the contract provided for delivery orders to be issued up to \$400,000, and an additional \$400,000 for an option year. Even though this IDT award totaled \$800,000 and initial requirements were identified which exceeded \$100,000, no cost or pricing data were requested or obtained. For this same contractor, we located a DCAA audit that was performed during the period of time in which the above mentioned contractor had the Ramstein contract. This audit was for an award processed by the U.S. Army Engineer Division Europe, Frankfurt, Federal Republic of Germany. Review of this DCAA audit report revealed that the rates awarded under the Ramstein IDT award were about 10 percent higher than the DCAA audited rates.

Price Negotiation Memorandum. FAR 15.808 requires that the contracting officer prepare a price negotiation memorandum (PNM) containing, among other things, a description of the extent to which the contracting officer relied on submitted cost or pricing data (if any), the reasons for any pertinent variances between the contractor's proposal and field pricing report recommendations, and a detailed explanation of the difference between elements of cost in the independent Government estimate and the contractor's proposal. This control documents the history of the negotiations and provides the rationale upon which the decisions were made. Three of the four IDT awards in our sample contained a PNM. Of the 19 related contracts reviewed, 5 did not include the required PNM.

Subcontractor Notification and Clauses. Selection of an A-E firm is based upon the firm's qualifications. The use of subcontractors is a significant aspect of the firm's application and is an important negotiation topic. Considering the effect of any changes in subcontracting, FAR 36.606(e) reiterates the requirement of FAR 44.204(d), which mandates the use of a contract clause in FAR 52.244-4, "Subcontractors and Outside Associates and Consultants," for A-E contracts. This clause states that:

Any subcontractors and outside associates or consultants required by the Contractor in connection with the services covered by the contract will be limited to individuals or firms that were specifically identified and agreed to during negotiations. The Contractor shall obtain the Contracting Officer's written consent before making any substitution for these subcontractors, associates, or consultants.

While all contracts reviewed at Ramstein included the subcontracting clause, none of the negotiation memorandums included any reference to agreed upon subcontractors, associates, or consultants or any mention that the topic was even discussed. The audit disclosed that unlisted subcontractors were being used who were local national employees of the 377th Civil Engineering Group at Einsiedlerhof Air Station. These Government employees were primarily responsible for the selection of the A-E firm for whom they ultimately acted as a subcontractor, the award and administration of the contract, the evaluation of the deliverables, and the acceptance of the final product. As discussed later in this report, an Air Force investigation disclosed that these employees were using Government supplies to perform their subcontracting work and may have performed these subcontracting duties on Government time.

Notification of Nonavailability of Subsequent Construction Contract. FAR 36.606(c) requires the contracting officer to inform the A-E firm that no construction contract may be awarded to the firm that designed the project, except as provided in FAR 36.209. At Ramstein, we found no indication in the reviewed contract files that this clause was discussed with the A-E contractors.

Performance Evaluations. FAR 36.604 requires that a Performance Evaluation (Architect-Engineer), SF 1421, be prepared for each A-E contract of more than \$25,000. Further, AFR 88-31 requires that the responsible design or construction activity prepare a performance evaluation report for all contracts over \$10,000. The performance reports shall be prepared after final acceptance of the work or after contract termination, as appropriate. These reports provide a control to ensure that the contractor is notified regarding the acceptability of his work. Additionally, the performance reports must be evaluated before any subsequent award either by the issuing contracting office or by other DoD contracting offices. FAR 36.604(c) requires that the performance "report shall be included in the contract file." In addition to maintaining a copy of the performance report in the contract file, DFARS 236.604(c) currently requires that a copy of the performance report be forwarded to a central data base maintained at the U.S. Army Engineer Division, North Pacific, Portland, Oregon. At the time of our review, only one of the IDT awards was complete, and it did not include a copy of a performance evaluation. Of the 13 contracts reviewed that were at or over \$25,000, 6 were complete but only 1 contained a performance evaluation in the contract file. At the time of our review, none of the performance evaluations had been reported to the central data base in Portland.

Release of Claims. FAR 32.111(d) requires contracting officers to include clause 52.232-10, "Payments under Fixed-Price Architect-Engineer Contracts," in fixed-price architect-engineer contracts. This clause prescribes that:

Before final payment under the contract, . . . and as a condition thereto, the Contractor shall execute and deliver to the Contracting Officer a release of all claims against the Government arising under or by virtue of this contract.

This clause provides a control that precludes subsequent unforeseen claims, so that the contract can be properly closed. This release of claims had not been processed for six of the eight completed contracts in our sample, even though final payment had been made on all eight.

Effect of Noncompliance With or Nonexistence of Internal Controls. Internal controls are intended to ensure that the Government's assets and resources are properly protected. If the internal controls are not adequate, or if established internal controls are circumvented, the system becomes susceptible to abuse, waste, and mismanagement. We contacted the Air Force, Office of Special Investigations (OSI), which informed us that it had initiated at least eight cases involving A-E contracting in the Ramstein Air Base area. These investigations were initiated based on information that certain engineers of the 377th Civil Engineering Group used their positions for choosing A-E contractors to accomplish U.S. Air Force projects for personal gain.

Two cases involve two A-E firms (hereafter referred to as Firm A and Firm B), both of which were awarded contracts by the Ramstein contracting office. The other six cases involve base civil engineers (hereafter referred to as Engineers A, B, C, D, E, and F), who were all local nationals, and were used as the technical experts to assist the A-E contracting officer at Ramstein. Five of these engineers, who were involved in most of the A-E contract award and administration functions at Ramstein, performed the following specific functions on the contracts in our sample:

- prepared the Government estimates,
- maintained the SF 254's,
- were members of the preselection boards,
- were members of the final selection boards,
- performed technical prenegotiation reviews,
- performed negotiations,
- acted as COR, and
- accepted design submittals.

Engineer A is highly placed in the Engineering and Design Branch, 377th Civil Engineering Group, Einsiedlerhof Air Station, Federal Republic of Germany. This engineer was identified to the OSI as the "ring leader" in procuring A-E work for the 377th Civil Engineering Group. His official duties and responsibilities included:

- providing executive and professional level engineering management, direction, and supervision over the activities of the branch together with active coordination between civil engineering functions and other base agencies, higher headquarters, Staatsbaumt, and other governmental and civilian agencies;
- serving as a professional consultant to the Chief of Engineering and Environmental Planning Division or other staff elements on special engineering problems;

- representing the division in conferences with construction agencies in discussing designs of important major projects;
- managing construction executions on multimillion dollar projects;
- acting as a member of the A-E Selection Board;
- developing and employing engineering planning methods and techniques to accomplish assigned tasks while making maximum use of staffing resources; and
- maintaining the work flow and taking appropriate action when a backlog occurred.

Excerpts from the OSI cases vividly describe the results of internal control weaknesses in the A-E contracting and administration process at Ramstein.

Firms were evaluated based upon the services they were capable of providing. One of four engineers who was investigated by OSI contacted the A-E firms prior to the award, allegedly giving an additional requirement to subcontract work back to the engineers. If the A-E firm was willing to meet this additional requirement, the firm was then selected for the contract. The engineers then recruited assistance from other engineers within their working group to accomplish the subcontracted work.

In March 1988, an owner of A-E Firm B informed OSI that the firm had a contract with the U.S. Air Force for about the last 3 years. Before that time, the firm had submitted SF 254's; however, the firm never received any indication from the Air Force that it was evaluated for any contract. The owner stated that he did not know the reason the firm may not have been evaluated for other contracts, but had heard that the 377th engineers "lost" (or intentionally misplaced) several SF 254's submitted by other A-E firms.

A member of A-E Firm A related a similar story. He informed OSI that the firm had performed projects for the U.S. Army Corps of Engineers since 1975, but did not receive an Air Force contract until 1986. . . The firm had submitted SF 254's to the 377th Engineering Support Group since 1978. However, the firm was not invited to negotiate a contract until 1986. The firm's representative also stated that he had heard rumors that the engineers did not review all SF 254's submitted or "conveniently lost" the SF 254's of firms to which they did not desire to award a contract.

OSI was told that the engineers under investigation acted as subcontractors for A-E Firm B on Air Force A-E projects. Further, these engineers prepared the drawings and specifications

for the buildings in these A-E projects for the A-E firm. Engineer B had reviewed a 90-percent submittal (one of the standard A-E contract deliverables) provided by the A-E firm. Several discrepancies were found and noted, but instead of sending the review comments back to the A-E firm for correction, Engineer B ordered two subordinate engineers (not under investigation) to go to the buildings in question and perform the required calculations during normal duty hours. The unidentified employees made the calculations, which were then incorporated into the contract specifications.

A letter, dated September 30, 1987, was sent to Firm B to give notice to proceed with the Phase III (100 percent) design for the project. A copy of the letter was returned to the engineers. Written on the bottom of the letter was a note in German from the A-E firm to the engineers, translated it read "Our due date is 10 Oct. Please turn over the corrected documents not later than 8 Oct to our office."

One of the base civil engineers, Engineer C, initiated court proceedings against Firm B. At the trial, the owner of Firm B testified that he requested a meeting with four of the engineers at a local guest house to discuss the profits from subcontracting services provided by the engineers. At the meeting, the engineers demanded 75 percent of the contract price for subcontracting work. The owner of Firm B stated that the rate was too high and 65 percent was agreed upon.

In support of the claim that the engineers were acting as subcontractors, OSI obtained copies of checks from Firm B to the engineers as follows:

| Date | Amount in Deutsche Marks (DM) | Payee | Remarks |
|-------------------|-------------------------------------|------------|-------------|
| August 22, 1988 | 1,271.92 | Engineer A | RAM 86-0549 |
| November 3, 1987 | 1,400.00 | Engineer A | |
| June 2, 1987 | 5,000.00 | Engineer A | |
| September 7, 1987 | 5,000.00 | Engineer A | |
| April 13, 1987 | 17,035.00 | Engineer C | |
| August 25, 1987 | 15,400.00 | Engineer B | |

OSI also obtained copies of an expense record form of Firm B for Engineer A showing work completed on project RAM 86-530, delivery order 5004, which includes a reference to the 65-percent agreement. A handwritten expense record of the same engineer shows an estimate citing 65 percent and a total amount of DM2,073.42. A billing statement, dated January 9, 1988, from Engineer A to Firm B, for work performed on Armed Forces Exchange Service garage, Vogelweh, was for DM25,712.52.

At the trial discussed previously, the owner of Firm B further testified that "some time ago" he and several of these engineers vacationed together in Spain where everyone discussed the possibility of investing money that "we ripped off the Americans" into a planned construction apartment project in Spain.

In an interview, the contracting officer told OSI that an owner of one of the A-E firms had previously worked for the 21st Area Support Group. The contracting officer believed that this A-E firm bypassed her office intentionally, and that this firm had friends at the 21st Area Support Group that approved the design as a favor. It was further stated that the contracting officer did not believe the engineer's office had received the completed documents, yet the engineer verified the 100-percent design phase completion.

OSI was also told of the following. After one of the base civil engineers had completed work on an A-E project for Firm C, the firm refused to make a required payment to the engineer. As a result of the nonpayment to the engineer, the firm was subsequently excluded from all future contracts at Ramstein.

OSI was also told that Engineer D gave copies of renovation designs of Vogelweh Chapel to Firm A for the renovation contract on the South Side Chapel on Ramstein. The design specifications for South Side Chapel were simply a partially corrected version of the Vogelweh Chapel design. Spelling mistakes were not corrected and the design of the basement was not deleted even though the South Side Chapel does not have a basement.

OSI was also told about a discussion overheard between Engineer E and another engineer (not being investigated). In this discussion, the other engineer stated that the engineers should stop the practice of subcontracting to A-E firms. He also stated that if the OSI investigation resulted in the public disclosure of the wrongdoings, it would be an embarrassment to all the engineers working for the U.S. Air Force.

An OSI review of the contract files disclosed that none of the engineers were listed as subcontractors of Firm A, B, or C.

During a remedies meeting held in December 1988, the 377th Civil Engineering Group management at Einsiedlerhof Air Station told the Base Legal Office and the Civilian Personnel Office (CPO) that it did not matter what OSI proved, the practices had been going on for years, and no personnel actions would be taken. The CPO indicated that the engineers may be guilty of violating the "Duty of Good Faith"; an unwritten law within the German legal system that requires employees of high standing to perform duties in the best interest of their employer. The CPO, however, refused to take any action against the engineers, claiming that OSI had not correctly complied with a 14-day remedy requirement.

CPO and the Base Legal Office were of the opinion the allegations had not been sufficiently substantiated.

On October 14, 1988, a Civil Contract Law officer in the Staff Judge Advocate office at Ramstein stated that he felt the integrity of the selection process for determining A-E contractors was severely damaged by the actions of the engineers assigned to the 377th Civil Engineering Group, and he did not feel a fair contract could be awarded by these same engineers.

On May 3, 1990, the Deputy Inspector General, DoD discussed these types of problems with representatives of the Government of the Federal Republic of Germany. The representatives agreed to review the circumstances involved and consider alternatives to address both the specific situation at Ramstein Air Base and to help preclude similar problems in the future. In the meantime, the Ramstein management personnel have informed us that the employees investigated by OSI have been reassigned to different positions where they will not be involved in future A-E contracts where the same conditions could occur.

RECOMMENDATIONS FOR CORRECTIVE ACTION

We recommend that the Assistant Secretary of the Air Force (Financial Management and Comptroller) direct the Commanding General, U.S. Air Force Europe to:

1. Establish procedures to:
 - a. Preclude, on an individual contract, duplication of personnel among the members of the preselection board and members of the final selection boards and, to the maximum extent possible, between the developer of the statement of work and the preparer of the independent Government estimate.
 - b. Change the composition of the selection boards to provide for rotation of board members on consecutive boards.
 - c. Require at least one member of the preselection and final selection boards to be from an engineering activity, group, or agency that is different than the requesting activity.
 - d. Require all independent Government estimates and statements of work to be signed and dated by the preparer and reviewed, approved, dated, and signed by supervisory personnel.
 - e. Require two reviewers and approvals for each submittal and receiving report.
 - f. Include the evaluation criteria, including the relative importance of each, in the public announcements.

g. Require more than one Government representative to be present at negotiations and the principal negotiator to be the contracting officer.

h. Maintain copies of the Standard Forms 254's and 255's for the firms recommended by the selection board and the other documentation discussed in these recommendations as part of the official contract file.

i. Develop and use a "check list" to ensure a complete documentation package for A-E contract award and administration.

j. Require contract award and administration training for civil engineers involved with the A-E contracting process.

k. Require civil engineers to maintain support files for functions involving A-E contracting.

l. Identify and/or prohibit employees of the U.S. Government from working as employees, free-lance employees, outside consultants or associates, or subcontractors of A-E firms who have U.S. Government contracts.

m. Require contracting personnel to review documentation submitted by technical support personnel for sufficiency.

2. Comply with the Federal Acquisition Regulation as it relates to architect-engineer contracting and subcontracting with specific emphasis on sections 15.808, 36.601(a), 36.602-1, 36.602-2, 36.602-3, 36.602-3(c), 36.602-3(d), 36.603, 36.604, 36.605, 36.606(c), 36.702(b)(2), 52.232-10 and 52.244-4.

3. For negotiation purposes, obtain certified cost and pricing data, request at least one Defense Contract Audit Agency audit, and use defective pricing clauses for all basic indefinite delivery-type awards with a not to exceed limit of \$100,000 or greater.

4. Take appropriate and necessary personnel action to protect the architect-engineer contract award and administrative process from further manipulation.

5. Report and track the resolution of the material internal control deficiencies identified in this report, as required by Department of Defense Directive 5010.38.

MANAGEMENT COMMENTS AND AUDIT RESPONSE

The Assistant Secretary of the Air Force (Acquisition) responded to our report and generally concurred (except as discussed below) with our findings and recommendations and provided additional

clarifying discussions as to actions already taken, or to be completed by September 1, 1990. (Appendix B).

The Air Force nonconcurred with Recommendation 1.a., to require separation of duties between the developer of the statement of work and the developer of the Government estimate. The Air Force also suggested that additional involvement by supervisors and the contracting officer would accomplish the same objective. We agreed with these suggestions and have reworded our recommendation accordingly.

The Air Force nonconcurred with Recommendation 1.b. to preclude board members from serving on consecutive boards. However, the Air Force did agree to change the composition of the boards' membership between consecutive boards. We agree that this meets the minimal intent of the recommendation and have reworded the recommendation accordingly.

The Air Force nonconcurred with Recommendation 1.f. of the draft report, to appoint contracting officer representatives for specific contracts and identify their specific responsibilities and authority. We still believe this is a valid requirement; however, we have withdrawn the recommendation, because the Inspector General, DoD is also performing an Audit of the Justification for Use of Time and Material Contracts (Project No. 8CE-0037) covering this area in more detail.

Finally, the Air Force nonconcurred with Recommendation 4. to take appropriate and necessary action, to include firing, of the employees involved, to protect the architect-engineer contract award and administration process from further manipulation. The Air Force has already taken action to reassign the employees involved as well as implementing additional controls in accordance with our other recommendations. We understand the requirements of various types of administrative actions, to include firing, of local national employees. We believe that the actions already taken by the Air Force comply with the intent of the recommendation to the extent that actions are currently available. If, and when, additional alternatives become available, we believe that they should be exercised to the maximum extent allowable. In the meantime, the Deputy Inspector General, DoD has discussed this matter with representatives of the Government of the Federal Republic of Germany. The representatives agreed to review the circumstances involved and consider alternatives to address the specific situation at Ramstein Air Base and to help preclude similar problems from occurring in the future.

LISTING OF INDEFINITE DELIVERY TYPE AWARDS AND SAMPLE CONTRACTS
REVIEWED AT
RAMSTEIN AIR BASE

| <u>Contract Number</u> | <u>Order/ Mod 1/</u> | <u>Contractor</u> | <u>Dollar Amount (000)</u> |
|------------------------|--------------------------|-----------------------------------|------------------------------------|
| F61521-86-D2008 | (Basic) ^{2/} | Ing. Buero Eltoplan ^{3/} | N/A ^{4/} |
| F61521-86-D2008 | 5005 | Ing. Buero Eltoplan | \$13 |
| F61521-86-D2008 | 500501 | Ing. Buero Eltoplan | \$25 |
| F61521-86-D2008 | 5020 | Ing. Buero Eltoplan | \$30 |
| F61521-86-D2009 | (Basic) | Ing. Buero Karl Jagsch | N/A |
| F61521-86-D2009 | 5004 | Ing. Buero Karl Jagsch | \$36 |
| F61521-86-D2009 | 500403 | Ing. Buero Karl Jagsch | (\$1) |
| F61521-86-D2009 | 5008 | Ing. Buero Karl Jagsch | \$39 |
| F61521-86-D2009 | 5011 | Ing. Buero Karl Jagsch | \$39 |
| F61521-86-D2009 | 5015 | Ing. Buero Karl Jagsch | \$34 |
| F61521-86-D2012 | (Basic) | Ing. Buero Karl Jagsch | N/A |
| F61521-86-D2012 | 5007 | Ing. Buero Karl Jagsch | \$46 |
| F61521-86-D2012 | 500705 | Ing. Buero Karl Jagsch | \$21 |
| F61521-86-D2012 | 5008 | Ing. Buero Karl Jagsch | \$55 |
| F61521-86-D2012 | 5009 | Ing. Buero Karl Jagsch | \$44 |
| F61521-86-D2012 | 500906 | Ing. Buero Karl Jagsch | \$16 |
| F61521-86-D2012 | 5010 | Ing. Buero Karl Jagsch | \$60 |
| F61521-86-D2012 | 501002 | Ing. Buero Karl Jagsch | \$10 |
| F61521-86-D2012 | 5013 | Ing. Buero Karl Jagsch | \$78 |
| F61521-86-D2012 | 5015 | Ing. Buero Karl Jagsch | \$32 |
| F61521-86-D2012 | 501501 | Ing. Buero Karl Jagsch | \$11 |
| F61521-87-D2001 | (Basic) | Ing. Buero Eltoplan | N/A |
| F61521-87-D2001 | 5000 | Ing. Buero Eltoplan | \$31 |

Footnotes:

1/ Order and modification numbers.

2/ Indefinite delivery type basic awards - 4.

3/ Ing. equals Ingenieur, which is German for Engineering.

4/ N/A equals Not Applicable.

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DEPARTMENT OF THE AIR FORCE
WASHINGTON DC 20330-1000

OFFICE OF THE ASSISTANT SECRETARY

MAY 29 1990

MEMORANDUM FOR ASSISTANT INSPECTOR GENERAL FOR AUDITING
OFFICE OF THE INSPECTOR GENERAL
DEPARTMENT OF DEFENSE

SUBJECT: Draft Report on the Audit of Architect-Engineer
Contracting at Ramstein Air Base, DOD/IG Report
9CD-0032.01 - INFORMATION MEMORANDUM

This is in reply to your memorandum for Assistant Secretary of the Air Force (Financial Management and Comptroller) requesting comments on the findings and recommendations made in subject report. Attached are detailed comments.

Robert D. Eaglet

ROBERT D. EAGLET, MGen, USAF
Assistant Deputy
Assistant Secretary of the
Air Force (Acquisition)

1 Atch
Air Force Comments

List of Findings with Comments

Final
Report
Page No.

1. The audit states "the potential for additional unethical acts still exists". (Concur w/Comment).

- This statement implies that management has not taken any action relative to the basic issues in this audit. This is not the case, and this statement does not serve a useful purpose. We request that it be deleted from your report. (OPR: HQ USAFE/DEE)

- The action that we have taken includes: (a) all personnel in the Engineering Design Unit have been given written guidance on AFR 30-30, Standards of Conduct, and have been encouraged to conduct their affairs in accordance with the intent of the regulation; and (b) the Civilian Personnel office will investigate the possibility of establishing a local regulation or policy which will bind non-US employees to the requirements of AFR 30-30.

2. The audit states "Engineering personnel performed the majority of the functions, while the contracting officer merely provided technical contracting advice and signed the contracts" and implies that engineering shouldn't perform the majority of the functions. (Concur w/Comment)

- Your chart of functions performed on page 13 is a fair representation of the actions required during the architect-engineer selection process. We assume that the point you are trying to make lies in the following two areas:

-- Both contracting and engineering are responsible for the preparation of the public announcement.

-- Both contracting and engineering are responsible for the development of the request for proposal.

Given this situation, it is then a true statement that engineering performs a majority of the functions. If you meant otherwise, please clarify your intent by specifying what functions engineering was performing in error. (OPR: HQ USAFE/DEE)

3. The audit states "A primary element in internal controls is the separation of duties: At Ramstein, we found severe violations of this particular internal control. Local national engineers, employed by the US Air Force, were performing many of the major functions in the A-E contract and administration process." (Concur)

- Controls will be established to maintain a separation of the preselection board and the final selection board duties. We feel that the duties of preparation of the statement of work and the independent government estimate should be performed by one individual as they are interrelated. The individual that develops the statement of work would be best suited to assess the costs associated with performance. (OPR: HQ USAFE/DEE)

4. Supervision. Adequate supervisory review and approval was lacking in selection board reports, original or revised independent government estimates (IGEs) and acceptance of contractor submittals. (Concur)

- In the supervision of the local national engineers, positive action has been taken to ensure that supervision is correct and continuous.

- The audit states "At Ramstein, the base civil engineering personnel, relied upon by the contracting officer as a technical advisor, consisted entirely of local nationals, supervised by a military chief". This issue needs to be clarified if you are suggesting that we significantly change our employment practices overseas by reducing the use of local national engineers and increase the number of US military and civilian positions (and accept the associated increased costs). (OPR: HQ USAFE/DEE)

5. Execution of Transactions and Events. At Ramstein, base civil engineer personnel were performing many of the A-E contract award and administration functions. Documentation did not exist to support their authority or to indicate the scope or limitations of their responsibility. (Nonconcur)

- FAR 36.600 prescribes policies and procedures applicable to the acquisition of architect-engineer services which are assigned to the Government and agencies. Engineering duties and responsibilities are established and assigned by AFR 88-31, para 4b. Contracting Officer Representative (COR) appointments are not necessary when specific responsibilities are assigned by regulation. (OPR: HQ USAFE/LGC)

6. Documentation. The contracting officer must receive and review the documentation provided to ensure that it is complete and adequate. Additionally, the engineering office must maintain a file to support the documentation provided to the contracting office. (Concur)

- The requirement for appropriate and complete documentation is understood. (OPR: HQ USAFE/DEE)

- Documentation will be complete. All documents, statements of work, government estimates, etc., will be reviewed to ensure that it is complete and accurate. (OPR: HQ USAFE/LGC)

7. Internal Controls Being Circumvented. (Concur)

- Noted. (OPR: HQ USAFE/LGC)

8. Public Announcement of Requirements. All requirements for A-E services were not being announced; therefore, there is no assurance that all interested firms were aware of the Government's requirement, or that effective competition was obtained. (Concur)

- Overseas purchases from foreign sources are exempt from FAR 5.202. However, current requirements for A-E services are being announced on the local market through trade journals. An interim checklist (developed by the Navy) is being used to assure that all A-E requirements are announced locally to assure maximum participation. We are preparing an A-E checklist to be published by Sep 1, 1990 that will be tailored to our requirements. (OPR: HQ USAFE/LGC)

9. Announced Evaluation Criteria. Only one of the four IDT awards was announced in a local trade journal. The prepared announcement did not include a list of evaluation factors or any assigned priority to the evaluation criteria. (Concur)

- Prioritized evaluation criteria will be included in our local announcements in order to obtain maximum participation from A-E firms. (OPR: HQ USAFE/LGC).

10. Independent Government Estimates. FAR 36.605 requires the preparation of an independent Government estimate and its submission to the contracting officer before negotiations. It also requires that estimate be dated. (Concur)

- Government cost estimates will be developed prior to negotiations and will be dated, as required. (OPR: HQ USAFE/DEE)

11. Maintenance of Engineer and Related Services Questionnaires. SF 254's were not being maintained, reviewed and updated annually. (Concur)

- FAR 36.603(c) places the responsibility with the parent agency to maintain an architect-engineer qualifications data file. AFR 88-31 placed this responsibility with the Base Civil Engineer. Copies of the SF 254 and SF 255 for the firms considered by the Selection Board will be forwarded to the contracting officer for use during negotiations and retention in the contract file. (OPR: HQ USAFE/DEE)

- Copies of the SF 254 and SF 255 pertaining to the firm that will receive the contract award will be retained in the contract file. (OPR: HQ USAFE/LGC)

- The audit states "We believe that this requirement of the AFR 88-31 is not in compliance with the FAR" (Filing of the SF 255). (Nonconcur).

- Review of the FAR Clause 36.603 and AFR 88-31, para Al-9 indicates that the inconsistency lies in the intended use of the SF 255. This form is developed for a particular project and is used for the A-E selection being acquired. Since it is project unique, it has little value for use in future A-E selections. Therefore, there is no reason the base civil engineer needs to keep the SF 255 on file. We believe that we are now in compliance with the FAR Clause 36.603 and AFR 88-31. Should further resolution be required, the OPR for AFR 88-31 is HQ USAF/LEED. (OPR: HQ USAFE/DEE)

12. Selection Boards. No one from the contracting office was included on the selection boards. (Concur)

- The base contracting officer is now included as a non-voting member of the architect-engineer final selection board. (OPR: HQ USAFE/DEE)

- There is no disagreement between the FAR and AFR 88-31. Base Civil Engineering is responsible for the selection boards. The contracting officer will require the documentation necessary to assure that the procurement is not compromised. The contracting officer has been attending the selection boards as a non-voting member since Jan 88. (OPR: HQ USAFE/LGC)

13. Evaluation of Past Performance. None of the selection board reports contained any indication that the selection boards attempted to review past performance of any contractors being considered, either from prior SF 1421s or from the central data base. (Concur)

- Contact has been made with the Portland Division of the US Army Corps of Engineers. Procedures will be developed to access this information. (OPR: HQ USAFE/DEE)

14. Selection Interviews. There was no documentation in three of the four IDT award files to indicate that any firms were ever contacted for discussions as required by the FAR. (Concur)

- While the FAR and AFR 88-31, para Al-4, provides guidance for the selection interview, there is no requirement that file documentation be included in the contract file. Details of these recommendations must be included in the minutes of the selection board. As the contracting officer is a non-voting member of the board, a copy of these minutes will be furnished to him/her. (OPR: HQ USAFE/DEE)

15. Selection Reports. For the single IDT award that indicated that the prospective contractors were interviewed, there was no summary of the discussions held. The basis used for the evaluation was not included in the contract files. None of the board reports contained any type of narrative summation of why one firm was ranked higher than another. (Concur)

- AFR 88-31 places the responsibility with the selection board to provide documentation to support the basis for the evaluation method used, the results of the discussions, interviews, if conducted, and a prioritized list, in order of preference, of a minimum of three A-E firms considered to be best qualified for approval. Procedures for this documentation will be developed and maintained in accordance with AFR 88-31. (OPR: HQ USAFE/DEE)

16. Negotiations. For five of the 18 contracts in our sample, there were no indications that negotiations were even held. (Concur)

- Documentation was not in the files reviewed. Current files contain negotiation documentation. This has been included as a checklist item to prevent further findings on this item. (OPR: HQ USAFE/LGC)

17. Certified Cost or Pricing Data. None of the IDT awards reviewed included the requirement for cost or pricing data or the defective pricing clauses. (Concur)

- Cost or pricing data was not requested for those files inspected. We are now requesting cost or pricing data on all awards expected to exceed \$100,000. This item is included on our checklist being developed. (OPR: HQ USAFE/LGC)

18. Price Negotiation Memorandum. Of the 19 related contracts reviewed, five did not include the required Price Negotiation Memorandum. (Concur)

- Contracting officer is required to ensure that price negotiation memorandums or documentation authorized by the UNSAFE FAR Sup are prepared on all negotiations and included in the contract file. (OPR: HQ USAFE/LGC)

19. Subcontractor Notification and Clauses. None of the negotiation memorandums included any reference to agreed upon subcontractors, associates or consultants or any mention that the topic was even discussed. (Concur)

- The contractor is required to notify the contracting officer of any subcontracted effort and obtain contracting officer's consent before making any changes in subcontracting.

This item will be discussed with each firm before contract award is made. This item is included on our checklist being developed. (OPR: HQ USAFE/LGC)

20. Notification of Nonavailability of Subsequent Construction Contract. At Ramstein, we found no indication in the reviewed contract files that this clause was discussed with the A-E contractors. (Concur)

- Contracting officer is discussing the requirements of FAR 36.606(c) with the A-E contractors. This item is included on our checklist being developed. (OPR: HQ USAFE/LGC)

21. Performance Evaluations. Of the six completed contracts reviewed, only one contained a performance evaluation in the contract file. (Concur)

- An SF 1421 will be completed and filed at the completion of each contract. SF 1421s will be maintained by the Base Civil Engineer for use during future A-E selections. Copies will be provided to the contracting officer and Portland Division Corp of Engineers. (OPR: HQ USAFE/DEE)

- Procedure has been established to assure that performance reports are received and included in the contract file in accordance with FAR 36.604(c). This item is included on our checklist being developed. (OPR: HQ USAFE/LGC)

22. Release of Claims. This release of claims had not been processed for six of the eight completed contracts in our sample, even though final payment had been made on all eight. (Concur)

- Procedures have been established to ascertain that a release of claims has been received before authorizing final payment. This item is included on our checklist being developed. (OPR: HQ USAFE/LGC)

23. Effect of Noncompliance With or Nonexistence of Internal Controls. Internal Controls were not adequate or nonexistent to ensure that the Government's assets and resources are properly protected. (Concur)

- Steps to implement internal controls as indicated in previous responses have been taken. As referenced in our previous response dated Jan 16, 1990, actions that were stated therein are on-going. At this time the German prosecutor is still actively investigating the allegations.

- Contrary to your comment on page 38, the 377th Civil Engineering Group remains committed to taking positive action to ensure compliance with internal controls and will pursue personnel actions consistent with Civilian Personnel Office policy and German law.

page 22

Recommendation for Corrective Actions

1. (1a). (Nonconcur). We agree that individuals should not participate in both the pre-selection and selection boards. We disagree that the preparer of the Statement of Work (SOW) should be different from the preparer of the government cost estimate. The project engineer, the person who has overall responsibility for the project design, must acquire a thorough, detailed, in depth knowledge of the project. Such knowledge is necessary to prepare either the SOW or the cost estimate. In an environment of limited staff personnel, totally independently developed cost estimates are not possible. While we understand the value of feedback to the writer of the statement of work, we do not have the manpower available. We will enhance the guidance we provide in developing statements of work and preparation of costs estimates. We would suggest that supervisory involvement and a review/understanding by the contracting officer would go a long way in achieving your goal. (OPR: HQ USAFE/DEE)

2. (1b). (Nonconcur). While we agree with the intent of the recommendation, in an environment of austere resources, this may not be possible. We can agree that the composition of the board change between consecutive boards, drawing the membership of each board from a pool of architects and engineers. This should achieve the necessary internal control of ensuring that the selection made by one board does not influence the selection made in the next board. (OPR: HQ USAFE/DEE)

3. (1c). (Concur). If we understand your definition of another "engineering activity" as being another branch within the same civil engineering squadron (as mentioned in verbal discussions), we can accept your recommendation. (OPR: HQ USAFE/DEE)

4. (1d). (Concur). (OPR: HQ USAFE/DEE)

5. (1e). (Concur). We accept this recommendation in the context provided during our verbal discussions. The project manager will review the documents and recommend approval/disapproval. The supervisor will review and approve/disapprove the documents. (OPR: HQ USAFE/DEE/LGC)

6. (1f). (Nonconcur). AFR 88-31 delegates the authority to the Civil Engineer to nominate members for a preselection and a selection board. These boards are formally constituted in published orders which indicate the role of each member, i.e., chairperson of the board, voting member, nonvoting member, recorder. (OPR: HQ USAFE/DEE)

7. (1g). (Concur). A-E evaluation criteria will be made a part of the public announcement published in local trade journals. (OPR: HQ USAFE/LGC)

8. (lh). (Concur). The principal negotiator is always the contracting representative and the technical advisor is the civil engineer. (OPR: HQ USAFE/LGC)

9. (li). (Concur). The SF 254 and SF 255 of the successful offeror will be retained in the contract file. (OPR: HQ USAFE/LGC)

10. (lj). (Concur). We are in the process of developing a checklist that will cover all pre-and-post award aspects of A-E and will include all of the items in the audit report. Estimated completion date of checklist is Sep 1, 1990. (OPR: HQ USAFE/LGC)

11. (lk). (Concur). Increased emphasis will be placed on ensuring continual training of our engineers and architects on the A-E selection process. (OPR: HQ USAFE/DEE)

12. (ll). (Concur). The base civil engineer will maintain the appropriate documentation supporting the A-E selection. (OPR: HQ USAFE/DEE)

13. (lm). (Concur). During negotiations the contracting officer will request that any of his employees that are also employed by the US Forces be identified. If any of the civil engineers' employees are identified, we will take appropriate management action to ensure that they are not accomplishing duties related to the particular A-E selection or A-E work under this particular contract. (OPR: HQ USAFE/DEE/LGC)

14. (ln). (Concur). Contracting is responsible for reviewing documentation submitted by technical support personnel for sufficiency. (OPR: HQ USAFE/LGC)

15. (2).
- a. FAR 15-808: (Concur) (OPR: HQ USAFE/LGC)
 - b. FAR 36.601(a): (Concur) (OPR: HQ USAFE/LGC)
 - c. FAR 36.602-1: (Concur) (OPR: HQ USAFE/DEE)
 - d. FAR 36.602-2: (Concur) (OPR: HQ USAFE/DEE)
 - e. FAR 36.602-3(c): (Concur) (OPR: HQ USAFE/DEE/LGC)
 - f. FAR 36.602-3(d): (Concur) (OPR: HQ USAFE/DEE)
 - g. FAR 36.603: (Concur) (OPR: HQ USAFE/DEE)
 - h. FAR 36.604: (Concur) (OPR: HQ USAFE/DEE/LGC)
 - i. FAR 36.605: (Concur) (OPR: HQ USAFE/DEE/LGC)
 - j. FAR 36.606(c): (Concur) (OPR: HQ USAFE/LGC)
 - k. FAR 36.702(b)(2): (Concur) (OPR: HQ USAFE/DEE)
 - l. FAR 52.232-10: (Concur) (OPR: HQ USAFE/LGC)
 - m. FAR 52.244-4: (Concur) (OPR: HQ USAFE/LGC)

16. (3) (Concur). Contracting will obtain certified cost and pricing data and use defective pricing clauses for all contracts, including basic indefinite delivery type contracts expected to exceed \$100,000. This item is included in our checklist. (OPR: HQ USAFE/LGC)

17. (4) (Nonconcur). As discussed with the auditor's staff, this recommendation is not possible. Time limits for action were established by other agencies, and disciplinary action was not taken during prescribed time period. Management is cognizant of its responsibilities and appropriate action will be taken when and if required in the future. (OPR: HQ USAFE/DEE)

18. (5) (Concur). Significant deficiencies identified in this report will be reported and tracked as required by Department of Defense Directive 5010.38. (OPR: HQ USAFE/DEE/LGC)

SUMMARY OF POTENTIAL MONETARY AND OTHER
BENEFITS RESULTING FROM AUDIT

| <u>Recommendation Reference</u> | <u>Description of Benefit</u> | <u>Amount and Type of Benefit</u> |
|-------------------------------------|--|---------------------------------------|
| Nos. 1 through 5 | Government Resources - Internal Control | Undeterminable |

The Air Force Office of Special Investigations is currently pursuing the amount of Government time and supplies that were misused. Contracts may not have been awarded to the best qualified architect-engineer contractor. The amount of lost monetary benefits cannot be determined since architect-engineer contracts are not awarded on a price competition basis.

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